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December 21, 2021

## BY ECF

The Honorable Lorna G. Schofield  
United States District Court for the Southern District of New York  
40 Foley Square  
New York, NY 10007

*Re: Catherine McKoy et al., et al. v. The Trump Corporation, et al., 18-cv-9936 (LGS)*

Dear Judge Schofield:

We write to provide the Court with another update on Plaintiffs' review of unaired *Celebrity Apprentice* footage. As we reported on Thursday (Doc No. 348) and following the Court's recent orders (Doc. Nos. 343, 346), we sent a team of five attorneys and staff to Los Angeles to commence on-site review last week, which was the soonest that both the footage and the necessary equipment could be made available to us. While we initially submitted this letter yesterday by email pursuant to section I(B)(1) of Your Honor's Individual Rules, we are re-submitting it via ECF at Your Honor's direction.

First, the good news: the team spent four days conducting their review efficiently and consistent with applicable COVID precautions and guidance. The team also worked collaboratively with MGM staff to maximize efficiency while ensuring COVID safety. To that end, we had been planning to return in January with two additional review stations, when MGM's offices reopen following the holidays. Our best estimate based on progress to date was that, with the additional review stations, we would be in a position to complete the review within approximately two weeks. That timetable would have ensured sufficient time for digital copying of the footage Plaintiffs designated as relevant, and the ability to use such footage at depositions.

Now the bad news: we just learned earlier today that two members of our MGM review team in L.A. have tested positive for COVID-19. We are working with these individuals to ensure that their health and safety are protected, and that holiday and other travel arrangements are dealt with appropriately. We also have notified the other members of our review team and are hopeful that no one else tests positive. And of course, we have notified MGM so that its staff members who were present can take appropriate precautions.

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In light of these unfortunate developments, it is looking increasingly unlikely that we will be able to continue the on-site review in early January as planned. We will continue working to make as much progress in discovery as possible and will continue to monitor the situation with respect to the feasibility and timing of further on-site review.

However, given current conditions with the Omicron variant, we respectfully suggest that the Court may wish to reconsider its prior orders with respect to on-site review, and let us pay the cost of having copies made of the recording that we have not yet had a chance to review (approximately 84% of the total), for which we could develop list of priority items.<sup>1</sup> That way, we could promptly resume our review as soon as the copies are made. Alternatively, if that method doesn't work, we may have no choice but to request modifications in the discovery schedule since we may not be able to return to Los Angeles to complete the on-site review for some time. Waiting until later in the spring 2022 to review the remaining tapes on-site, as Your Honor previously suggested, is not feasible under the current schedule since we already have identified multiple pieces of relevant footage which will serve as the basis for questioning at depositions, including but not limited to the depositions of certain of the defendants (Donald J. Trump, Donald Trump, Jr., and Ivanka Trump) who participated in the two *Celebrity Apprentice* episodes at issue, and those depositions, under the current schedule, need to be completed by April 29, 2022.

We are available to discuss these matters at the Court's convenience and will continue to keep the Court apprised of further developments.

Respectfully submitted,



Roberta A. Kaplan

cc: Counsel of Record (by ECF)

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<sup>1</sup> As an added precaution given the confidentiality concerns, we would also be willing to agree to return the copies of the complete recordings to MGM following our review and only use the materials that we have determined to be relevant.